

APPEAL NO. 040607
FILED APRIL 20, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 18, 2003. The disputed issue was whether the respondent (claimant) had disability. The hearing officer decided that due to the claimant's compensable injury of _____, the claimant had disability from May 29, 2003, through the date of the CCH. The appellant (carrier) appealed. In Texas Workers' Compensation Commission Appeal No. 033249, decided February 5, 2004, the Appeals Panel reversed the hearing officer's decision and remanded the case to the hearing officer for reconstruction of the CCH record. No CCH on remand was held, however, a copy of the transcript of the November 18, 2003, CCH and copies of the CCH exhibits were provided. In the decision on remand, the hearing officer again determined that as a result of his compensable injury, the claimant had disability from May 29, 2003, through the date of the CCH held on November 18, 2003. The carrier appeals, contending that the claimant failed to prove that he had disability because he worked after his injury and then resigned from employment. The claimant asserts that sufficient evidence supports the hearing officer's decision.

DECISION

Affirmed.

Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." The claimant had the burden to prove that he had disability. The parties stipulated that the claimant sustained a compensable injury to his low back and left shoulder on _____, and that as of the date of the CCH, no doctor had certified that the claimant had reached maximum medical improvement. The evidence reflects that as a result of his compensable injury, a doctor placed the claimant on modified duty with specified work restrictions; that the employer was given a copy of the work restrictions; that the employer did not provide the claimant with a modified duty position; that the claimant continued to work his regular job in pain; and that the claimant resigned from his job with the employer on May 28, 2003, because he could no longer perform his job duties due to his compensable injury and because the employer had not provided him with a modified-duty position in accordance with the doctor's work restrictions for the compensable injury. The hearing officer found that the claimant resigned his position of employment on May 28, 2003, because he could not continue to work the duties of his employment due to his compensable low back injury; that the employer did not accommodate the claimant's medical restrictions as imposed by a doctor treating the claimant; and that from May 29, 2003, through the date of the November 18, 2003, CCH, the claimant was unable, due to his compensable low back injury, to obtain and retain employment at wages equivalent to his preinjury wage. The hearing officer concluded that the claimant had disability from May 29, 2003, through

the date of the November 18, 2003, CCH. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge